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GOVERNMENT GAZETTE

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SUPPLEMENT

(SUPLEMENTO)

GOVERNMENT OF GOA, DAMAN AND DIU

Law Department

No 2356/64

The following Act passed by the Legislative Assembly of Goa, Daman and Diu received the assent of the President of India on the 16th December, 1964 and is hereby published for general information.

The Goa, Daman and Diu Agricultural Tenancy Act, 1964

(No. 7 of 1964) [16th December, 1964]

An Act to provide for the regulation of the terms of tenancy with respect to agricultural lands in the Union territory of Goa, Daman and Diu and for matters connected therewith.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Fifteenth year of the Republic of India as follows:

CHAPTER I

Preliminary

1. Short title, extent and commencement. — (1) This Act may be called the Goa, Daman and Diu Agricultural Tenancy Act, 1964.

(2) It extends in the first instance to the Goa area of the Union Territory of Goa, Daman and Diu, but the Government may, by notification, extend it to the other areas with such modifications as may be necessary.

(3) It shall, unless otherwise specifically provided in this Act, come into force on such date as may be fixed by notification by the Government.

2. In this Act, unless there is anything repugnant to the subject or context —

(1) «agriculture» with its grammatical variations and cognate expressions, includes the raising of food crops like paddy, wheat, pulses, millets and vegetables and of sugar cane and ground nut but, save as otherwise expressly provided by or under subsection (1) of section 3, does not include the raising of produce from fruit bearing trees including cocoanut, arecanut, cashew, or mango;

(2) «agriculturist» means a person who cultivates land personally;

(3) «allied pursuits» means rearing or maintaining plough bulls, breeding of livestock, dairy farming, poultry farming, grazing on grounds reserved for the purpose and such other pursuits connected with agriculture as may be prescribed;

(4) «Collector» means any person appointed by the Government to perform the functions of the Collector under this Act;

(5) «Co-operative Society» means a society registered under the provisions of any law relating to co-operative societies for the time being in force in the particular area;

(6) «to cultivate» with its grammatical variations and cognate expressions, means to till or husband land for the purpose of raising or improving agricultural produce, whether by manual labour or machinery, or to carry on any agricultural operation thereon; and the expression «uncultivated» shall be construed correspondingly;

(7) «to cultivate personally» means to cultivate land on one's own account —

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

- (iii) under the personal supervision of oneself or any member of one's family, by hired labour or by servants on wages payable in cash or kind but not in crop share;

Explanation 1—For the purpose of clause (iii) personal supervision shall not be deemed to exist unless the person or member resides in the village in which land is situated or in any nearby village within 7 kilometres thereof, during the major part of an agricultural season.

Explanation 2—A widow or a minor or a person who is subject to physical or mental disability or a serving member of the Defence Forces shall, notwithstanding anything contained in Explanation 1, be deemed to cultivate any land personally if such land is cultivated by servants or by hired labour or through tenants.

Explanation 3—Notwithstanding anything as aforesaid, in the case of a joint family, land shall be deemed to be cultivated personally, if it is so cultivated by any member of such family otherwise than by virtue of Explanation 2.

Explanation 4—In the case of a company, association or other body of individuals, whether incorporated or not, or a religious, charitable or other institution capable of holding property, any land shall be deemed to be cultivated personally, if such land is cultivated by hired labour or by servants under the personal supervision of an employee or agent of such company, association, body or institution;

(8) «Government» means the Government of Goa, Daman and Diu.

(9) «improvement», means, with reference to any land, any work which adds to the value of the land, and which is suitable thereto as also consistent with the purpose for which it is held, and includes—

(a) the construction of tanks, wells, water channels, embankments and other works for storage, supply or distribution of water for agricultural purposes;

(b) the construction of works for the drainage of land or for the protection of land from floods or from erosion or other damage from water;

(c) the reclaiming, clearing, enclosing, levelling or terracing of land;

(d) the erection of buildings on the land reasonably required for the convenient or profitable use of such land for agricultural purposes; and

(e) the renewal or reconstruction of any of the foregoing works or alterations therein or additions thereto as are not of the nature of ordinary repairs;

but does not include such clearances, embankments, levellings, enclosures, temporary wells, water channels and other works as are commonly made by the tenants in the ordinary course of agriculture;

(10) «joint family» means an undivided Hindu family or a group or unit of persons the members of which are, by custom, joint in estate or residence;

(11) (i) «land» means land which is used for agricultural purposes or which is so used but is left

fallow, and includes the sites of farm buildings appurtenant to such land;

(ii) «Khajan land» means low land situated near creeks or riversides;

(iii) «Ker land» means land having adequate irrigation or drainage facilities;

(iv) «morod land» means any other land.

Provided that in case of doubt as to the category of any particular land, the matter shall be referred to the Tribunal whose decision shall be final;

(12) «landlord» means a person from whom a tenant holds land on lease;

(13) «lease» means a transfer of a right to enjoy land, made orally or in writing, for a specified, or unspecified period, and in consideration of rent;

(14) «legal representative» means a person who represents the estate of a deceased person;

(15) «Mamlatdar» means any officer appointed by Government to perform the duties of a Mamlatdar under this Act;

(16) «notification» means notification published in the Official Gazette;

(17) «Official Gazette» means the Goa, Daman and Diu Government Gazette;

(18) «person» includes a joint family, comunidade, temple, church, mosque or any other religious or charitable institution;

(19) «prescribed» means prescribed by rules made under this Act;

(20) «rent» means any consideration in money or kind or both, paid or payable by a tenant on account of the use or occupation of the land held by him but shall not include the rendering of any personal service or labour;

(21) «serving member of the Defence Forces» means a person in the service of the Defence Forces of the Union; provided that if a question arises whether any person is in such service, such question shall be decided by the Government and its decision shall be final;

(22) «tenancy» means the relationship of landlord and tenant;

(23) «tenant» means a person who on or after the date of commencement of this Act holds land on lease and cultivates it personally and includes a person who is deemed to be a tenant under this Act;

(24) «Tribunal» means the Tribunal constituted under this Act; and

(25) «year» means the year ending on the 31st day of March or on such other date as the Government may, by notification, appoint for any area.

3. Extent of application.—(1) Where it is made to appear to the Government that any land, which was used immediately before the 1st of July, 1962 for an agricultural purpose, was subsequently converted to other uses, such as for raising crops of cocoanut, arecanut, cashew or mangoes or for any other non agricultural purpose, either for defeating the objects of this Act or otherwise, the Government may, if it thinks fit, and after giving to the landlord and the tenant a reasonable opportunity of being heard and after considering the objections, if any, direct that all or any of the provisions of this Act and the rules made

thereunder shall apply to the land, and thereupon, the land shall be deemed to be agricultural land in relation to the provisions made applicable thereto, notwithstanding anything contained in clause (1) of Section 2.

(2) The provisions of sub-section (1) shall not apply to land converted to non-agricultural use for the purpose of any industry or other schemes of development approved by the Government.

(3) Save as otherwise provided in this Act expressly or by necessary implication, the provisions of this Act shall apply to all tenancies of agricultural land notwithstanding any other law, custom, usage, decree or order of a court or tribunal, or any agreement or contract to the contrary.

(4) The provisions of any other law for the time being in force, relating to leases of immovable property shall, in so far as they are not inconsistent with the provisions of this Act, apply to the tenancies and leases of land to which this Act applies.

CHAPTER II

Security of Tenure

4. **Persons deemed to be tenants.**—A person lawfully cultivating any land belonging to another person (hereinafter in this section referred to as the owner) on or after the 1st of July, 1962 but before the commencement of this Act, shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not—

- (i) a member of the owner's family, or
- (ii) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or of any member of the owner's family, or
- (iii) a mortgagee in possession.

Provided that if upon an application made by the landlord within one year from the commencement of this Act to the Mamlatdar within whose jurisdiction the land is situated:—

(a) the Mamlatdar declares that such person is not a tenant and his decision is not reversed on appeal or revision, or

(b) the Mamlatdar refuses to make such declaration but his decision is reversed on appeal or revision,

such person shall not be deemed to be a tenant under this section.

Provided further that a sub-tenant cultivating any land belonging to another person on the 1st of July, 1962 shall, notwithstanding the fact that the creation of the sub-tenancy might have been prohibited by any law for the time being in force, be deemed to be lawfully cultivating the land as a tenant for the purposes of this section; and in such cases, the intermediary tenant or tenants prior to the creation of the subtenancy shall not be deemed to be a tenant or tenants for the purposes of this Act.

5. **Right of persons holding on the date of liberation.**—A person who lawfully cultivated as a tenant or sub-tenant any land belonging to another person (hereinafter in this section referred to as the owner) on or after the 19th of December 1961 but before

the 1st July, 1962 shall be deemed to be a tenant for all the purposes of this Act. —

- (i) if such person cultivated it personally for any period immediately preceeding the latter date,
- (ii) if such land was not cultivated personally by the owner,
- (iii) if such person was not one of the persons mentioned in clauses (i) to (iii) of section 4 and
- (iv) if such person is restored to possession of such land in pursuance of sub-section (3) of section 8.

6. **Explanations.**—For the purposes of sections 4 and 5—

- (i) where the person who lawfully cultivated the land on the relevant date is, on or before the date of coming into force of this Act, dead, his legal representative, or where there are more than one legal representative all of them jointly, shall be entitled to the same rights and subject to the same obligations as the deceased person;
- (ii) where any land is held by two or more persons jointly as tenants, all such persons shall, if any one of them cultivated and continues to cultivate such land personally, be deemed to be tenants in respect of such land;
- (iii) where any land is cultivated by a widow or minor or a person who is subject to physical or mental disability or a serving member of the Defence Forces, through a tenant then, notwithstanding anything contained in Explanation (1) to clause (7) of section 2, such tenant shall be deemed to be a tenant.

7. **Question of tenancy.**—If any question arises whether any person is a tenant or should be deemed to be a tenant under this Act the Mamlatdar shall, after holding an inquiry, decide such question.

8. **Bar to eviction and restoration of possession.**—

(1) No tenancy of any land shall be terminated and no person holding land as a tenant shall be liable to be evicted therefrom save as provided under this Act.

(2) Where any such person as is referred to in section 4 has been evicted from the land on or after the 1st July, 1962 such person shall be entitled to recover immediate possession of the land in the manner prescribed by or under this Act unless the landlord proves that the termination of tenancy was in the manner authorised under section 9.

(3) Where any such person as is referred to in section 5 was evicted from such land on or after the 19th of December, 1961 but before the 1st of July, 1962, such person shall, in the manner prescribed by or under this Act, be entitled to recover possession of the land if—

- (i) he applies to the Mamlatdar within six months from the date of coming into force of this Act stating that he agrees to become a tenant on the same terms and conditions as existed before and as modified by the provisions of this Act;

- (ii) he proves that the eviction was malafide and was intended to defeat the purposes of this Act; and
- (iii) he pays to the landlord the arrears of rent, if any, due from him under the terms of his tenancy or gives sufficient security therefor:

Provided that where the land from which such person was evicted had been leased out by the landlord to another person for any period after the said date, the evicted person shall not be entitled to recover possession before the first day of the year immediately following the year in which this Act comes into force.

(4) Notwithstanding anything contained in the foregoing provisions, where the Government is satisfied that a tenant has for reasons beyond his control omitted to take steps for restoration of possession within the time prescribed therefor, it may on its own motion, direct the Mamlatdar to entertain and dispose of an application.

(5) Notwithstanding anything contained in the other provisions of this Act, where a person who was holding land on lease from a landlord has, in cases coming under section 4, on or after the 1st July, 1962, and in cases coming under section 5, on or after the 19th December, 1961, surrendered his right of tenancy to the landlord on or before the 28th July, 1964, he shall not be entitled to restoration of possession under this Act, if such surrender was voluntary and was made before the Administrator of the Concelho, in accordance with the rules and orders, if any, in that behalf or is found to be genuine by the Mamlatdar after holding an enquiry.

9. Modes of termination of tenancy.—The tenancy of any land may be terminated—

- (a) by the tenant by surrender of his right to the landlord in the manner provided in section 10; or
- (b) by the landlord on the grounds specified in section 11; or
- (c) under any other specific provision of this Act.

10. Surrender by Tenant.—(1) Any tenant may surrender his right of tenancy in respect of any land to the landlord and thereupon the tenancy in respect of that land shall stand terminated if the following conditions are satisfied:

- i) the surrender is made at least one month before the commencement of the year;
- ii) it is made by the tenant in writing and is admitted by him before the Mamlatdar;
- iii) it is made voluntarily and in good faith to the satisfaction of the Mamlatdar;
- iv) it is approved by the Mamlatdar; and
- v) the conditions in clauses (a) to (d) of subsection (4) of section 20 are satisfied.

(2) Where the land is cultivated jointly by joint tenants or members of a joint family, the surrender, unless it is made by all of them, shall be ineffective in respect of such joint tenants or members, as the case may be, as have not joined in the application for surrender.

(3) Where the Mamlatdar is of opinion that the conditions mentioned in subsection (1) are not satisfied, he may, after giving a reasonable oppor-

tunity to the landlord to show cause against taking action under this subsection, and holding such enquiry as he may,—

- (i) refuse to approve the surrender, or
- (ii) submit the case to the Government for orders under the next sub-section.

(4) Where a case is submitted under the preceding subsection, the Government may, by order, transfer the tenancy right to any other person, including a Comunidade, a Co-operative Society or a Panchayat, who, in its opinion, is a fit and proper person to be a tenant, and thereupon such other person shall be deemed to be a tenant for the purposes of this Act.

11. Termination of tenancy by landlord.—(1) The landlord may terminate a tenancy on the ground that the tenant:

- (a) has failed to pay the rent for any period on or before the date or dates fixed by or under this Act, or
- (b) has done any act which is destructive or permanently injurious to the land, or
- (c) has sub-divided, sub-let, or assigned any interest in the land, otherwise than as permitted under sections 14 and 15, or
- (d) has failed to cultivate the land personally, or
- (e) has used such land for a purpose other than agriculture.

(2) No tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this section unless the landlord gives at least ninety days notice in writing to the tenant intimating his decision to terminate the tenancy and the ground for such termination and unless within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated:

Provided that where the said breach occurs for the second time the tenant shall be liable to pay to the landlord by way of penalty a sum equal to 50 per cent of the rent payable for that season for the land in relation to which the breach has occurred;

Provided further, that where a breach of the same kind occurs on more than two consecutive occasions no such notice as is referred to above shall be necessary and the landlord shall be entitled to straightaway make an application to the Mamlatdar under sub-section (4).

(3) The tenancy of a tenant who is a minor, or is subject to physical or mental disability, or is a serving Member of the Defence Forces shall not be terminated on the ground only that the land comprised in the tenancy has been sub-let by or on behalf of such tenant.

(4) Where the landlord after the expiry of the period of notice, if any, mentioned in subsection (2) decides to terminate the tenancy under this section, he shall within such time as may be prescribed apply to the Mamlatdar for permission to do so and the Mamlatdar may accord permission or, if he considers it necessary for reasons to be recorded in writing and after considering the objections, if any, of the landlord, submit the case to the Government for orders under sub-section (4) of section 10.

12. Special provisions regarding termination for non-payment of rent.—(1) Where the tenancy of any

land held by a tenant is terminated for non-payment of rent and the landlord files any proceeding to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceedings within thirty days from the date of the order and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order of ejectment, pass an order directing that the tenancy has not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated:

Provided that nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent within the period fixed by or under this Act and the landlord has complied with the requirements, if any, of any notice to the tenant by or under this Act.

(2) The landlord may apply to the Mamlatdar in the prescribed form for recovery of arrears of rent for any period not exceeding three years. The Mamlatdar may, after such enquiry as he considers necessary, pass such order as he deems fit. The Mamlatdar in passing an order shall allow the tenant to set off the sum, if any, paid by him to the landlord within the period of three years immediately preceding the date of application made under sub-section (1) in excess of the rent due from him:

Provided that if the Mamlatdar is satisfied that in consequence of a total or partial failure of crops or similar calamity the tenant has been unable to pay the rent due, the Mamlatdar may, for reasons to be recorded in writing,

- i) direct, after hearing the landlord, that no rent shall be payable for the period of such failure of crops by the tenant, or
- ii) direct, after hearing the tenant and the landlord, that the arrears of rent, or such part thereof as may be considered reasonable by the Mamlatdar, together with the cost of proceedings, if awarded, shall be paid within one year from the date of the order and that if before the expiry of the said period the tenant fails to pay the said arrears of rent and costs the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted.

(3) When a tenant tenders an amount on account of rent to the landlord for any period and if the landlord refuses to receive it or refuses to grant a receipt for it, the tenant may present to the Mamlatdar an application in writing for permission to deposit in his office the full amount of rent. The Mamlatdar may receive the amount in deposit and give a receipt for it. Notice of the amount so deposited shall be given to the landlord and if the Mamlatdar is satisfied that the payment by the tenant was bona fide it shall be paid to the landlord, and thereupon it shall constitute a discharge of the tenant's liability in respect of the rent for such period and no claim or application by a landlord for rent shall be maintainable in respect of the period for which the rent has been so deposited by the tenant.

13. Tenancy during usufructory mortgage.— If any land is mortgaged by a landlord by way of usufructory mortgage to a tenant cultivating such land, the tenancy of such land shall be in abeyance during

the period the mortgage subsists. After the expiry of the said period it shall, notwithstanding any other law for the time being in force, be lawful for the tenant to continue to hold the land on the terms and conditions on which he held it before the mortgage was created.

14. Rights of tenants are heritable.— (1) Where a tenant dies, the landlord shall be deemed to have continued the tenancy—

(a) if such tenant was a member of a joint family, to the surviving member or members of the said family, and

(b) if such tenant was not a member of a joint family, to his heir or heirs on the same terms and conditions on which such tenant was holding it at the time of his death.

(2) The surviving members, or as the case may be, the heirs, to whom the tenancy is continued under sub-section (1) shall be entitled to partition and sub-division of the land leased subject to the following conditions:

(a) each sharer shall hold his share as a separate tenant;

(b) the rent payable in respect of the land leased shall be apportioned among the sharers according to the share allotted to them;

and if any question arises regarding the shares or the apportionment of the rent payable by the sharers, it shall be decided by the Mamlatdar whose decision shall be final.

(3) Where any question arises as to the person or persons in whose favour tenancy is deemed to have been continued under the foregoing provisions, such question shall be determined by the Mamlatdar after hearing the landlord and other persons interested in the matter:

Provided that nothing in this subsection shall preclude the rights of parties being determined by a court of law.

15. Sub-division, sub-letting and assignment prohibited.— (1) Save as otherwise provided in this Act, no sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid.

(2) Notwithstanding anything in sub-section (1), it shall be lawful for a tenant:—

(a) who is a widow, minor or a person subject to any physical or mental disability, or a serving member of the Defence Forces to sub-let such land held by her or him as a tenant, or

(b) who is a member of a Co-operative Society and as such member to sub-let, assign, mortgage or to create a charge on his interest in the land in favour of such Society.

(3) Notwithstanding anything contained in sub-section (1), it shall also be lawful for a tenant to mortgage or create a charge on his interest in the land in favour of the Government or of a Co-operative Society, in consideration of a loan advanced to him by the Government or the Co-operative Society, as the case may be and without prejudice to any other remedy open to the Government or the Co-operative Society, as the case may be, in the event of his making default in payment of such loan in accor-

dance with the terms on which such loan was granted it shall be lawful for the Government or the Co-operative Society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

16. Bar to attachment, seizure or sale by process of Court.— Save as expressly provided in this Act any interest in the land held by a tenant as such shall not be liable to be attached, seized or sold in execution of a decree or order of a Civil Court.

17. Dwelling house of tenant in landlord's site.—

(1) If in any village, a tenant of any agricultural land is in occupation of a dwelling house on a site belonging to his landlord, such tenant shall not be evicted from such dwelling house (with the materials and the site thereof and the land immediately appurtenant thereto and necessary for its enjoyment as a dwelling house).

(2) The provisions of sub-section (1) shall not apply to a dwelling house which is situate on any land used for the purpose of agriculture the tenancy of which has been terminated for personal cultivation by the landlord.

(3) If the landlord of a site referred to in sub-section (1) intends to sell such site, such tenant at the expense of whom or whose predecessor-in-title a dwelling house is built thereon, shall be given in the manner provided in sub-section (4) the first option of purchasing the site at a value determined by the Tribunal.

(4) The landlord intending to sell such site shall give notice in writing to the tenant requiring him to state within ninety days from date of service of such notice whether he is willing to purchase the site.

(5) If within the said period the tenant intimates in writing to the landlord that he is willing to purchase the site, the landlord shall make an application to the Tribunal for the determination of the market value of the site. On receipt of such application the Tribunal shall, after giving notice in the prescribed manner and after holding enquiry, determine the market value of the site and shall, by an order in writing, require the tenant to deposit the amount so determined within ninety days from the date of such order. On the deposit of such amount the site shall be deemed to have been transferred to the tenant and the amount deposited shall be paid to the landlord. The Tribunal shall, on payment of the prescribed fees, grant a certificate in the prescribed form to the tenant specifying therein the particulars of the site so transferred and the name of the tenant.

Provided that where the Tribunal is satisfied that the tenant is unable to make the deposit of the said amount within the period mentioned above it may permit the tenant to make the deposit in three equal annual instalments, or, where the tenancy is terminated earlier, in suitable instalments before the termination; in such cases the site shall be deemed to have been transferred to the tenant on payment of last instalment.

(6) If in respect of a site which a landlord offers to sell to the tenant under the provisions of sub-section (3), the value payable therefor by the tenant is agreed to between him and the landlord, either the landlord or the tenant or both jointly may apply

to the Tribunal and thereupon the Tribunal shall, on payment of the prescribed fees, grant a certificate in the prescribed form; the value that is so agreed upon shall be deemed to be the market value determined by the Tribunal for the purposes of sub-section (5).

(7) If the tenant fails to intimate his willingness to purchase the site within the period referred to in sub-section (4) or fails to deposit the amount of the value within the time specified in sub-section (5), the tenant shall be deemed to have relinquished his right of first option to purchase the site:

Provided that no tenant of agricultural land shall, so long as he remains such tenant, be liable to be evicted from the site by the purchaser of such site unless any other nearby site is offered to him by the landlord or by the Government.

Provided further that the tenant shall be entitled to such compensation as may be determined by the Tribunal, for any loss caused to him on account of the eviction.

(8) Any sale of a site effected in contravention of this section shall be void.

(9) The Government may, by notification direct that the foregoing provisions of this section shall, in any area specified in the notification, apply also in respect of dwelling houses and the sites thereof occupied by agricultural labourers or artisans or in respect of land held on lease by persons carrying on allied pursuits for the purpose of such pursuit.

18. Procedure for taking Possession.— (1) A tenant entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar. The application shall be made in such form and within such period as may be prescribed by or under this Act.

(2) No landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar, for which he shall make an application in such form and within such period as may be prescribed by or under this Act.

(3) On receipt of an application under sub-section (1) or (2) the Mamlatdar shall, after holding an enquiry, pass such orders thereon as he deems fit, with due regard to the other provisions of this Act and the rules.

(4) Any tenant or land lord taking possession of any land or dwelling house except in accordance with the provisions of sub-section (1) or (2), shall be liable to forfeiture of crops, if any, grown in the land in favour of the landlord or the tenant, as the case may be, in addition to payment of such costs as may be awarded by the Mamlatdar or by the Collector on appeal and also to the penalty, if any, prescribed by or under this Act.

(5) The Government may, by notification, direct that the provisions of the foregoing sub-sections shall apply to sites used for allied pursuits as they apply to sites of dwelling houses of an agriculturist and thereupon the provisions shall so apply.

CHAPTER III

Resumption by landlord

19. Application of this chapter.— The provisions of this Chapter shall come into force only on a date

to be fixed specially by notification, which shall not be earlier than the date of completion of survey and settlement of agricultural land in the particular area, in pursuance of the provisions of this Act or any other law:

Provided that where the landlord is able to furnish adequate proof to the satisfaction of the Mamlatdar as to his ownership and the extent, identity and other relevant particulars of the land and where the other conditions prescribed by or under this Act for resumption of land for personal cultivation are satisfied, the Mamlatdar may authorise resumption.

20. Resumption of land for personal cultivation. —

(1) Notwithstanding anything contained in the other provisions of this Act, but subject to the provisions of this chapter, a landlord may, in the manner provided in sub-section (2), terminate the tenancy of any land if the landlord genuinely requires the land for cultivating it personally.

(2) Where the landlord proposes to act under sub-section (1) he shall give a notice to the tenant in writing, stating the purpose for which the landlord requires the land and shall, save as otherwise provided in sub-section (3), serve the notice on the tenant on or before a date to be notified in this behalf by the Government. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession shall be made to the Mamlatdar within ninety days from the date aforesaid and the Mamlatdar may, after being satisfied as to the genuineness, pass orders authorising the termination of tenancy and eviction of the tenant.

(3) Where the landlord is a minor, or a widow with a life interest or a person serving in the Defence Forces or a person subject to any physical or mental disability, then, if he has not given a notice and made an application as required by sub-section (2), such notice may be given and such application may be made —

(a) by the landlord within one year from the date on which —

- (i) in the case of a minor, he attains majority;
- (ii) in the case of a person serving in the Defence Forces, he ceases to serve in such Forces, and
- (iii) in the case of a person subject to physical or mental disability, he ceases to be so subject; and

(b) in the case of a widow with a life interest, by the successor in title within one year from the date on which the widow's interest in land ceases to exist:

Provided that where land is held by two or more joint holders, the provisions of this sub-section shall not apply, if at least one joint holder is outside the categories specified in this sub-section:

Provided further that in cases coming under sub-clause (ii) of clause (a), the provisions of sub-sections (4) and (5) shall not apply.

(4) The landlord's right to terminate the tenancy of any tenant under sub-section (1) shall be subject to the following conditions —

(a) the landlord or a member of his family must reside in the village in which the land is situated or in a village within 7 kilometres thereof, during the major portion of any agricultural season;

(b) he shall not be entitled to resume more than 2 hectares of paddy land in the case of Khajan or Ker lands and 4 hectares in the case of any other land.

(c) the landlord is not cultivating any other land;

(d) the income by the cultivation of the land he seeks to resume is his main or principal source of income for his maintenance; and

(e) if more tenancies than one are held under the same landlord, then the landlord shall be competent to terminate only the tenancy or tenancies which are the shortest in point of duration.

Explanation — For the removal of doubt it is hereby declared that the condition in clause (c) shall not apply where the extent of land, if any, already under the personal cultivation of the landlord is less than the ceiling specified in clause (b) and the area sought to be resumed does not exceed what is required to make up such ceiling.

(5) For the purposes of this section all partitions of property between co-owners, joint tenants or co-parcenors, and all transfers of property by way of gift, made on or after the date to be notified in this behalf, shall be ignored and deemed not to exist, unless such partition or transfer is approved by the Tribunal.

(6) No tenancy can be terminated under this section —

(a) in such manner as will result in leaving with a tenant, after termination, less than half the area of the land leased to him, or

(b) if the tenant has become a member of a co-operative farming society, so long as he continues to be such member.

(7) If a landlord who resumes any land for personal cultivation under the foregoing provisions fails to cultivate the land within one year from the date of such resumption he shall, within the prescribed time, restore possession of the land to the tenant who was cultivating the land immediately before such resumption.

(8) If, within the prescribed time, the tenant makes an application to the Mamlatdar and satisfies him that the landlord has failed to comply with the provisions of sub-section (7), the tenant shall be entitled on a direction by the Mamlatdar to obtain immediate possession of the land and to such compensation as may be awarded by the Mamlatdar for any loss caused to the tenant by eviction and by failure on the part of the landlord to restore or give possession of the land to him as required under that sub-section.

(9) If, in consequence of the termination of tenancy under the foregoing provisions, any part of the land leased is left with the tenant, the rent of the land so left shall be apportioned in the prescribed manner in proportion to the area of such land.

(10) The tenancy of any land left with the tenant after the termination of the tenancy for personal cultivation, shall not, at any time, afterwards be liable to termination again on the ground that the landlord genuinely requires the land for personal cultivation.

21. Reservation for non-agricultural purposes. —

A landlord may terminate the tenancy of any tenant and reserve the land for any non-agricultural purposes, if he is permitted to do so by the Government.

Thereupon, the provisions of the foregoing sections of this chapter shall mutatis mutandis apply as if the landlord resumes the land for personal cultivation.

22. Special rules. — Without prejudice to the generality of sub-section (1) of section 61 but subject to sub-section (2) thereof, the Government may make rules for —

- (i) the manner of conducting enquiries into applications for possession of lands made under this chapter;
- (ii) the selection of lands for taking possession;
- (iii) the exchange or consolidation of fragments to secure as far as possible a contiguous area to the landlord or the tenant;
- (iv) the time when the termination of tenancy will take effect; and
- (v) any other matter as may be considered necessary for giving effect to the provisions of this chapter.

Explanation—In this section the expression “fragment” means such area as may be prescribed.

CHAPTER IV

Fixation of rent

23. Maximum Rent. — (1) Subject to the other provisions of this Act, the rent payable by a tenant to the landlord in respect of any land shall not exceed one sixth of the gross produce of such land.

(2) For the purposes of sub-section (1) gross-produce means.

- (i) such quantity as may be agreed to between the landlord and the tenant as representing the total produce of the land;
- (ii) where there is no such agreement, such quantity as is ascertained by actual measurement of the produce immediately after harvest in the presence of the Sarpanch, the Gram Sevak, the Escrivao or any other respectable person; and
- (iii) where the Government has, in relation to any village or area prepared and published any Record of Rights or other data based on crop cutting experiment or otherwise, the gross produce shall be ascertained with reference to such principles, if any, as may be prescribed.

(3) (a) Where a tenant raises a second crop during the year, the quantity raised by the tenant in such crop shall not be included in the gross produce unless;

- (i) there is a recognized practice of paying rent in respect of second crop; or
- (ii) the second crop is raised with substantial assistance from the landlord.

Provided that in the case of crops other than paddy, grown as a second crop, both the conditions specified above shall be fulfilled.

Explanation: —

Where a tenant raises, in any land under paddy cultivation, any crop of millets, pulses or vegetables, not as a main crop but as a subsidiary or secondary crop, such crop shall be deemed to be a second crop for the purposes of this sub-section.

(b) Where, for the purposes of clause (a), any question arises as to the existence of a recognized practice or, as the case may be, of substantial assistance from the landlord, such question shall be decided by the Mamlatdar after holding an inquiry.

(4) The rent payable by a tenant to the landlord shall be paid within thirty days from the date of the final operations in respect of each harvest; such rent may be paid in cash or in kind at the option of the land lord at such conversion rates as may, from time to time, be fixed by the Government by notification.

(5) Notwithstanding anything in the foregoing provisions, where the Government considers it necessary to do so, it may, by notification, declare that in any specified area, the rent payable in kind or as a share of crop, shall be commuted into cash rent at the rate specified therein; and thereupon, the commuted cash rent shall not be altered for a period of five years from the date of commutation, unless the Tribunal, on an application by the landlord or tenant, orders otherwise.

(6) If by custom, usage, agreement or decree or order of a Court the amount of rent payable is less than the maximum specified in sub-section (1) the amount so payable shall be the rent in respect of the land, if the Mamlatdar on application by the tenant and after holding an inquiry, determines the existence of such custom, usage, agreement, decree or order of Court.

(7) The provisions of this section shall come into force on the 1st of September 1964, and shall apply to rents payable by a tenant to a landlord in respect of all harvest of any agricultural produce after that date:

Provided that in respect of the harvest immediately after the date specified above the tenant shall, in addition to the rent payable by him, pay to the landlord a sum of money representing the expenditure incurred by the landlord, whether by way of cost of cultivation or otherwise, which the tenant is liable to pay under the provisions of this Act, and any such sum shall be deemed to be rent payable by the tenant to the landlord in respect of that harvest for all the purposes of this Act.

24. Maximum Rent after Survey & Settlement.

(1) The provisions of this section shall come into force in any area with effect from such date as may be fixed specially by notification.

(2) In any area in which a survey and settlement of agricultural lands have been completed in pursuance of the provisions of this Act or of any other law, the maximum rent payable by a tenant to a landlord shall be such multiples of the land revenue, not exceeding five, as may be prescribed for each area.

(3) Where the maximum rent has been fixed under sub-section (2) the Mamlatdar shall, for each village or group of villages or for any area in such village or group within his jurisdiction, fix the rate of rent payable by the tenant for the lease of different classes of land situated in such village, group or area, as the case may be.

(4) The rate of rent so fixed shall continue for a period of 5 years and shall be liable to be revised by Government thereafter at the end of each successive

period of 5 years; provided that the rate of rent so fixed, if not revised at the end of next period, shall continue until it is so revised.

(5) The rent payable by a tenant to his landlord in respect of any land in a village, or group of villages or area, shall be at the rate fixed under sub-section (3);

Provided that the Mamlatdar may at any time during any such period of five years, on an application made to him in this behalf and after hearing the landlord or the tenant as the case may be—

(i) reduce the rent, if he is satisfied that on account of the deterioration by flood, or other cause beyond the control of the tenant, the land has been wholly or partially rendered unfit for cultivation, or

(ii) subject to the maximum fixed under sub-section (2), enhance the rent, if he is satisfied that on account of any improvement made in the land, at the expense of the landlord, there has been an increase in the agricultural produce thereof.

(6) Until the rent is fixed in accordance with the provisions of the preceding sub-sections a tenant shall, subject to the maximum provided under sub-section (2), be liable to pay rent to the landlord at the rate at which it was payable immediately before the date referred to in sub-section (1).

(7) The rent payable under this section shall, at the option of the landlord, be payable in kind at such conversion rates as may be fixed by the Government by notification from time to time.

25. Compensation and penalty for excess recovery of rent.—If any landlord recovers rent from any tenant in contravention of the provisions of section 23 or 24, he shall forthwith refund the excess amount recovered to the tenant and shall be liable to pay such compensation to the tenant as may be determined by the Mamlatdar, and shall also be liable to such penalty as may be prescribed by or under this Act.

26. Liability for cost of cultivation, tax, works etc.—(1) In the case of land in respect of which rent has been fixed under the foregoing provisions a landlord shall not be liable to make any contribution towards the cost of cultivation of the land in the possession of his tenant, except to the extent otherwise specifically provided for in this Act.

(2) (a) The liability to pay land revenue in accordance with the provisions of any law for the time being in force shall be that of the landlord.

(b) The liability to pay irrigation cess in accordance with the provisions of any law for the time being in force, shall be that of the tenant.

(c) The liability to pay any other rate, tax, fee, cess, or other charge levied by or under any other law shall be as provided in such law and in the absence of any provision, that of the tenant.

(3) In the case of Khajan and Ker lands the duty and responsibility of carrying out works of maintenance, repair and conservancy of banks, bunds, or ridges of tanks or rivers or other sources of irrigation shall be that of the tenant and the landlord

shall not be liable to make any contribution to the cost of such works:

Provided that in the case of repairs to breaches in the protective or other bunds in Khajan lands, Government shall contribute 50 per cent of the cost of such repairs.

(4) Where the benefit of any such works as is referred to in the preceding sub-section is derived by or is available to more tenants than one, the cost of such works shall be distributed between all such tenants in such proportion as may be agreed to between them or, in the absence of an agreement, as may be determined by the Mamlatdar, having due regard to all relevant circumstances of the case.

(5) For the purpose of ensuring that the duty and responsibility referred to in sub-section (3) are discharged properly and promptly, the Government may, by order, direct the tenants concerned to take such measures as may be specified in the order. A copy of every such order shall be sent to the landlord.

(6) If any tenant commits default in complying with any direction or order passed under the preceding sub-section the provisions of sub-sections (4) and (6) of section 37 shall apply to such default as if it is a default within the meaning of that section.

27. Bar to recovery of any other sum from tenant.—Save as otherwise provided in this Act, it shall not be lawful for any landlord to levy any rate, tax, fee, cess or other charge for service of any description or denomination whatsoever from any tenant in respect of any land held by him as a tenant other than the rent lawfully due in respect of such land.

28. Benefit of any suspension or remission of rent.—(1) Whenever by reason of any natural calamity or like circumstances the payment of the whole land revenue payable to the Government in respect of any land is suspended or remitted in accordance with such principles as may be provided for in this behalf the landlord shall suspend or remit, as the case may be, the payment to him of the rent of such land by his tenant. If in the case of such land the land revenue is partially suspended or remitted, the landlord shall suspend or remit the rent payable by the tenant of such land in the same proportion.

(2) If no land revenue is payable to Government in respect of such land and if for any reason, the payment of the whole or any part of the land revenue payable to Government in respect of any other land in the neighbourhood of such land has been suspended or remitted, the Collector shall, subject to the general or special orders of Government, in the manner provided in sub-section (1) suspend or remit as the case may be, the payment to the landlord of the rent or part of it due in respect of such land.

(3) No proceedings shall be taken for recovery by a landlord of any rent, the payment of which has been remitted or suspended or during the period for which the payment of such rent has been remitted or suspended under this section. The period during which the payment of rent is remitted or suspended under this section shall be excluded in computing the period of limitation prescribed for any proceeding for the recovery of such rent.

(4) If any landlord fails to suspend or remit the payment of rent as provided in this section, he shall

be liable to refund to the tenant the amount recovered by him in contravention of this section, if the Mamlatdar, after making an inquiry, orders the refund.

CHAPTER V

Other rights and liabilities

29. General.—Save as provided in this Act, the rights and privileges of any tenant under any custom, usage or law for the time being in force or arising out of any contract, grant, decree or order of a court or otherwise howsoever, shall not be limited or abridged.

30. Presumption as to rent and duty to give receipt.—(1) In the absence of an express intimation in writing to the contrary by a tenant, every payment made by a tenant to the landlord shall be presumed to be a payment on account of rent due by such tenant for the year in which the payment is made.

(2) When any amount of rent is received in respect of any land by a landlord or by a person on behalf of such landlord, the landlord or, as the case may be, the person shall at the time when such amount is received by him give a written receipt therefor in such form and in such manner, if any, as may be prescribed.

31. Tenant's right to trees on the land.—(1) If in any portion of agricultural land leased to a tenant not covered by cultivation, the tenant has planted or plants any trees, he shall be entitled to the produce and the wood of such trees during the continuance of his tenancy and shall on the termination of his tenancy be entitled to such compensation for the said trees as may be determined by the Mamlatdar:

Provided that the tenant shall not be entitled to compensation under this section if the tenancy is terminated by surrender under section 10.

(2) If in any such portion of the land as is referred to in sub-section (1) there are any trees naturally growing thereon, the tenant shall, during the continuance of his tenancy, be entitled to two-thirds of the produce of the trees and the landlord to the remaining one third.

32. Compensation for improvements made by tenant.—(1) A tenant who has made any improvement on the land held by him, other than what he is bound to do under this Act, shall, if his tenancy is terminated under the provisions of this Act, be entitled to compensation for such improvement the amount of which shall, on application made by the tenant in the prescribed form, be determined by the Tribunal in accordance with the provisions of sub-section (2).

(2). The amount of compensation shall be the value of the improvement at the time of the termination of the tenancy estimated with due regard to:

(a) the amount by which the value of the land is increased by the improvement;

(b) the condition of the improvement as at the time of application and the probable duration of its effect;

(c) the labour and capital provided or spent by the tenant for the making of the improvement; and

(d) any reduction or remission of rent or other advantage allowed to the tenant by the landlord in consideration of the improvement.

33. Right to erect farmhouse.—A tenant shall be entitled to erect a farmhouse on the land held by him as a tenant with the consent of the landlord and without detriment to the area of cultivation:

Provided that where the landlord refuses to give consent within a period of sixty days from the date of request, or where the landlord unreasonably refuses to give such consent, the tenant shall be entitled to erect the farmhouse with the consent of the Mamlatdar to be given after hearing the parties.

34. Maintenance of boundary marks.—The responsibility for the maintenance and good repair of the boundary marks of the land held by the tenant and for the payment of any charges reasonably incurred on account of services by revenue officers in case of alteration, removal or disrepair of such boundary marks shall be that of the tenant.

35. Repairs to protective bunds.—(1) The duty and the responsibility of the construction, maintenance or repairs of any bunds protecting any land held by a tenant other than bunds referred to in sub-section (3) of section 26 shall be that of the tenant notwithstanding any law, agreement usage or custom or decree or order of a court, to the contrary.

(2) If it appears to the Government that the said construction, maintenance or repair has been neglected owing to a dispute between the tenant and the landlord, or between the tenants themselves, or for any reason, the Government may, by order in writing, direct that the construction, maintenance or repair shall be carried out by such person as may be specified in the order and the costs thereof shall be recoverable from the person in actual possession of the bund as arrears of land revenue.

(3) The person from whom the costs are recovered under subsection (2) shall be entitled to recover the same or an appropriate portion thereof from any person who in law is wholly or partially liable to construct, maintain or repair the bunds.

36. Power to assume management.—(1) If it appears to the Government that for any two consecutive years including any period before the commencement of this Act, any land has remained uncultivated through default either of the landlord or of the tenant, or that cultivation of any land has seriously suffered for any other cause whatsoever, or that any land capable of being used, if reclaimed or otherwise improved, howsoever, has not been so reclaimed or otherwise improved and cultivated, or that any land is remaining as a pasture land in excess of the ordinary grazing requirements of the cattle of the persons entitled to graze cattle thereon, the Government may, after such enquiry as may be prescribed, declare by notification that the management of such land shall be assumed, and such declaration shall be conclusive.

(2) On the publication of a notification under sub-section (1), the Government or an officer authorised by the Government in this behalf shall appoint a manager to be in charge of the land and the manager so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860.

(3) During the period commencing from the date of publication of the notification under sub-section (1) and ending with the termination of management under subsection (4) the following provisions shall have effect, namely:

(a) all legal proceedings pending and all processes, executions or attachments in force in respect of debts and liabilities enforceable against the land shall be suspended and no fresh proceedings, processes, executions or attachments shall be instituted, issued, enforced or executed in respect thereof;

(b) the landlord shall be incompetent and the manager shall be competent:

- (i) to enter into any contract with respect of the land,
- (ii) to mortgage, charge, lease or alienate the land or any part thereof; and
- (iii) to grant valid receipts for rents or profits accruing from the land:

Provided that the manager shall not be competent to alienate any land save with the prior approval of the Government and with the consent of the landlord, or, where the landlord cannot be found, after the publication of a notice in the prescribed manner;

(c) all powers, which, if the management of the land has not been assumed, would have been exercisable by the landlord shall be exercisable by the manager who shall receive and recover all rents and profits due in respect of the land under management and for the purpose of recovering the same may exercise, in addition to the powers exercisable by the landlord, the powers exercisable by a Collector for the recovery of land revenue;

(d) from the sums received on account of the land, the manager shall pay —

- (i) the costs of management including the cost of necessary repairs;
- (ii) the Government revenue and all sums due to the Government in respect of the land under management;
- (iii) the rent, if any, due to any superior holder in respect of the land;
- (iv) such periodical allowance as the Collector may from time to time fix for the maintenance and other expenses of the landlord and of such members of his family as the Collector directs; and
- (v) the cost of such improvement of the land as he thinks necessary and is approved by the Collector;

(e) the manager shall pay to the landlord the balance, if any, remaining after the expenses referred to in clause (d) have been defrayed:

Provided that if any proceedings in respect of debts and liabilities enforceable against the land have been suspended under clause (a), the manager shall, out of such balance deposit an amount, not exceeding the amount estimated to be required for the meeting of such debts and liabilities, with the Court in which the proceedings were pending.

(4) (a) When in the opinion of the Government it has become unnecessary to continue the management of the land the Government shall by notification terminate the management thereof.

(b) On the termination of management, the land (together with any balance of monies creditable to

the landlord) shall be delivered to the landlord from whom the management was assumed or, if he is dead, to the person appearing to the Government to be entitled to the land.

(c) All acts done by the manager during the period of management shall be binding on the landlord or other person to whom the land is delivered under clause (b).

(d) The period during which the institution of any proceedings has been prohibited by clause (a) of sub-section (3) shall be excluded from the computation of the period of limitation for the institution of that proceeding.

(5) The Government may appoint a Communitade, a Village Panchayat or a Co-operative Society as manager for the purposes of this section.

37. Prescription of standards of cultivation and management. — (1) With a view to bring agricultural economy to a higher level of efficiency, the Government may, by rules, regulate standards of efficient cultivation and management.

(2) Such rules may provide for the issue of directions as regards the methods of agriculture to be adopted, for the use of improved seeds, for the proper maintenance of embankments and bunds, for the sale of surplus foodgrains, and for ensuring proper wages and terms of employment to agricultural workers, for the maintenance of regular and accurate accounts in respect of cultivation, and for the issue of such other direction as may be necessary or desirable for the efficient utilisation of lands.

(3) Subject to the rules made under sub-section (1), the Government may by order published in the Official Gazette prescribe any programme of agricultural operations.

(4) If any tenant makes any default in observing the standards or programme referred to above he shall —

- (i) for the first season in which the default occurs, be issued a warning;
- (ii) for the next season in which a default occurs, be liable to pay additional rent to the landlord of ten per cent over and above the rent payable by him, if the default is not due to any act or omission on the part of the landlord; and
- (iii) for the succeeding season in which the default occurs again be liable to be evicted from the land under an order of the Mamlatdar.

(5) If any landlord makes any default in observing the standards or programmes referred to above, he shall be liable to forego in favour of the tenant ten per cent of the rent due to him if such default occurred more than once in a year.

(6) The penalties provided in sub-sections (4) and (5) shall be in addition to the penalties if any, provided by, or under this Act or any other law for the time being in force.

38. Tenant's right to operate sluice gates. — (1) Where, for the purpose of regulating supply of water for irrigation of any land, there is any sluice gate or other such contrivance, the right to operate and the duty and responsibility of maintaining such sluice gate or other contrivance, as also the right to the fisheries, if any, in the vicinity thereof, shall be

that of the tenant, notwithstanding any other law, custom, usage, agreement, or contract, decree or order of any court to the contrary.

(2) Where immediately before the commencement of this Act, any such right as is referred to in sub-section (i) vested in the landlord or any other person, other than the Government, the tenant shall be liable to pay to the landlord or other person, by way of rent for the exercise of the right conferred under that sub-section, a sum of money to be fixed by the Tribunal in accordance with such principles as may be prescribed.

(3) The rights conferred on a tenant under sub-section (1) shall, where there are more tenants than one who derive benefit from the same sluice gate or other such contrivance, be exercised by all the tenants jointly in accordance with such principles as may be prescribed.

39. Construction of water course through land belonging to other persons.—(1) If any person (hereinafter called the applicant) desires to construct a water course to take water for the purpose of agriculture from a source of water to which he is entitled, but such water course is to be constructed through any land which belongs to, or is in possession of, another person (hereafter called the neighbouring holder), and if no private agreement is arrived at for such construction between the applicant and the neighbouring holder, the person desiring to construct the water course may make an application in the prescribed form to the Mamlatdar.

Explanation—For the purposes of this section the neighbouring holder shall include the person to whom such land belongs and all persons holding through or under him.

(2) On receipt of the application, if the Mamlatdar, after making an inquiry and after giving to the neighbouring holder and all other persons interested in such land an opportunity of stating any objection to the application, is satisfied that for ensuring the full and efficient use for agriculture of the land belonging to the applicant it is necessary to construct the water course, he may, by order in writing direct the neighbouring owner to permit the applicant to construct the water course on the following conditions:

- (i) the water course shall be constructed through such land in such direction and manner as is agreed upon by the parties or failing agreement, as directed by the Mamlatdar so as to cause as little damage to the land through which it is constructed, as may be possible;
- (ii) where the water course consists of pipes, the pipes shall be laid at a depth not less than one foot and a half from the surface of the land;
- (iii) where the water course consists of water channel, the channel shall not exceed five feet in breadth;
- (iv) the applicant shall pay to the neighbouring holder such compensation for any damage caused to such land by reason of the construction of the water course or such annual rent, as the Mamlatdar may decide to be reasonable;

- (v) the applicant shall maintain the water course in a fit state of repairs;
- (vi) the applicant shall within the prescribed period execute an agreement in the prescribed form in favour of the neighbouring holder; and
- (vii) such other conditions as the Mamlatdar may think fit to impose.

(3) An order made under sub-section (2) shall direct how the amount of compensation shall be apportioned among the neighbouring holder and all persons interested in the land.

(4) Any order made under sub-section (2) shall after the applicant executes an agreement as required under clause (vi) of sub-section (2) be a complete authority to him or to any agent or other person employed by him for the purpose to enter upon the land specified in the order with assistants or workmen and to do all such works as may be necessary for the construction of the water course and for renewing or repairing the same.

(5) The provisions of the foregoing subsections and of sections 40 to 42 shall apply *mutatis mutandis* to the case of a person whose land does not have adequate drainage facilities and who desires to construct a drainage channel through any land which belongs to, or is in the possession of, another person.

40. Failure to pay rent and to keep water course in good repair.—If the applicant in whose favour an order under sub-section (2) of section 39 was made—

(a) fails to pay the amount of compensation or the amount of the rent, it shall be recovered as an arrear of land revenue on an application being made to the Mamlatdar by the person entitled thereto;

(b) fails to maintain the water course in a fit state of repairs, he shall be liable to pay such compensation as may be determined by the Mamlatdar for any damage caused on account of such failure.

41. Removal or discontinuance of water course.—

(1) If a person intends to remove or discontinue the water course constructed under the authority conferred on him under section 39, he may do so after giving notice to the Mamlatdar and the neighbouring holder.

(2) In the event of removal or discontinuance of such water course, the person taking the water shall fill in and reinstate the land at his own cost with the least practicable delay. If he fails to do so, the neighbouring holder may apply to the Mamlatdar who shall require such person to fill in and reinstate the land.

42. Neighbouring holder entitled to use surplus water on payment of rate.—The neighbouring holder or any person on his behalf shall have the right to the use of any surplus water from the water course on payment of such rates as may be agreed upon between the parties, and on failure of agreement, as may be determined by the Mamlatdar. If a dispute arises whether there is or is no surplus water in the water course, it shall be determined by the Mamlatdar, and his decision shall be final.

CHAPTER VI

Tribunal, Procedure and Appeals

43. Tribunal.— (1) For the purpose of this Act, there shall be a Tribunal consisting of not less than three Members, called the Agricultural Lands Tribunal, for such area as the Government may, by notification, from time to time, specify:

Provided that it shall be lawful for the Government by notification, to confer on any other Tribunal constituted or functioning under any other law for the time being in force, all or any of the powers conferred on a Tribunal by or under this Act and thereupon such other Tribunal shall be deemed to be an Agricultural Lands Tribunal constituted under this sub-section in relation to the said powers, notwithstanding anything inconsistent in such other law.

(2) Save as otherwise provided, the qualifications of the Members constituting the Tribunal, their conditions of service and all other matters relating to the constitution or organisation of the Tribunal shall be such as may be prescribed:

Provided that the Chairman of such Tribunal shall be a person having such legal experience or qualifications as may be prescribed.

44. Other functions of the Tribunal, etc.— (1) The Mamlatdar, the Tribunal and the Collector shall in addition to the powers and duties conferred upon them by or under the provisions of this Act, perform in relation to this Act such other functions as may be prescribed and shall decide such other matters as may be referred to them by the Government.

(2) All other matters arising for determination and all disputes between the landlord and the tenant in relation to matters arising under this Act and not otherwise provided for shall be decided by the Tribunal.

(3) The Government may by notification vest any other officer or authority, including a Village Panchayat or Co-operative Society or the Block Development Officer, with any of the powers and duties conferred by or under this Act on the Mamlatdar.

45. Powers of Tribunal.— (1) The Tribunal shall have the same powers in making inquiries under this Act as are vested in Courts in respect of the following matters under the Code of Civil Procedure, 1908 in trying a suit, namely:

- (a) proof of facts by affidavit,
- (b) summoning and enforcing the attendance of any person and examining him on oath,
- (c) compelling the production of documents,
- (d) awarding costs, and
- (e) such other powers as may be prescribed.

(2) The orders of the Tribunal shall be given effect to in the manner provided by or under this Act.

46. Commencement of Proceedings.— Save as otherwise expressly provided by or under this Act, all inquiries and other proceedings before the Mamlatdar or Tribunal shall be commenced by an application which shall contain the following particulars:

- (a) the name, age, profession and place of residence of the applicant and the opponents;
- (b) a short description and situation of the property of which possession is sought, or the amount of the claim, as the case may be;

(c) the circumstances out of which the cause of action arose;

(d) a list of the applicant's documents, if any, and of his witnesses, and whether such witnesses are to be summoned to attend or whether the applicant will produce them on the day of the hearing; and

(e) such other particulars as may be prescribed.

47. Power to transfer proceedings.— (1) The Government, or the Collector within the area of his jurisdiction, may after due notice to the parties, by order in writing transfer any proceeding under this Act pending before a Mamlatdar from such Mamlatdar to any other Mamlatdar and the Mamlatdar to whom the proceeding is so transferred shall thereupon exercise jurisdiction under this Act in such proceedings.

(2) The Government may in exceptional circumstances or in public interest transfer to itself any proceedings pending before a Tribunal or Collector.

48. Execution of order for payment of money or restoring possession.— (1) Any sum the payment of which has been directed by an order of the Mamlatdar or the Tribunal or the Collector, including an order awarding costs, shall be recoverable from the person ordered to pay the same as an arrear of land revenue; an order of the Mamlatdar or the Tribunal awarding possession or restoring the possession or use of any land shall be executed in such manner as may be prescribed:

Provided that such recovery shall not be made and such order shall not be executed till the expiry of the period of appeal or, as the case may be, of application for revision as provided in this Act.

(2) An order or decision of the Mamlatdar in execution proceedings, subject to appeal, if any, shall be final.

49. Appeals.— (1) From every order other than an interim order passed by the Mamlatdar under this Act, an appeal shall lie to the Collector and the orders of the Collector on such appeal shall be final, subject to revision, if any, by Government:

Provided that in respect of such classes or categories of appeals, as may be prescribed, the appeal shall lie to the Tribunal instead of to the Collector, and thereupon the orders of the Tribunal shall likewise be final.

(2) From every original order other than an interim order or an order in appeal or revision passed by the Collector, or by the Tribunal, an appeal shall lie to the Government and the orders of Government on such appeal shall be final.

50. Revision.— (1) Where no appeal lies under this Act, or none has been filed within the period provided for it, the Collector may, on his own motion or on an application made by an aggrieved person or on a reference made in this behalf by the Government, at any time, call for the record of any inquiry or the proceedings of any Mamlatdar for the purpose of satisfying himself as to the legality or propriety of any order passed by and as to the regularity of the proceedings of such Mamlatdar, and pass such order thereon as he deems fit:

Provided that no such record shall be called for after the expiry of one year from the date of such

order and no order of such Mamlatdar shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

(2) The Government, may, in like circumstances, in like manner and subject to like restrictions exercise the same powers in relation to records or proceeding of the Collector, the Tribunal or any Mamlatdar:

Provided that no application for revision of any order passed by a Mamlatdar shall lie to the Government at the instance of an aggrieved person if such person had moved such application before the Collector under sub-section (1).

51. Extent of powers in appeal or revision. — (1) The Collector the Tribunal or the Government, in appeal or in revision, may confirm, modify or rescind the order in appeal or revision or its execution or may pass such other order as may seem legal and just in accordance with the provisions of this Act.

(2) The orders passed in appeal or revision shall be executed in the manner provided for the execution of the orders of the Mamlatdar or the Tribunal under this Act.

52. Limitation and Court fees. — (1) Every appeal or application for revision under this Act shall be filed within a period of sixty days from the date of the order of the Mamlatdar, Tribunal or Collector, as the case may be, and the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of such appeal or application for revision.

(2) Notwithstanding anything contained in the Court Fees Act, 1870 every appeal or application made under this Act to the Mamlatdar, Tribunal, Collector or the Government shall bear a Court fee stamp of such value as may be prescribed.

53. Procedure. — (1) Subject to the other specific provisions in this behalf, the procedure to be followed by the Mamlatdar or the Tribunal or the Collector or the Government in all inquiries, appeals and proceedings under this Act and in revisions by the Collector or the Government, shall be such as may be prescribed;

(2) Every decision or order passed under this Act shall be recorded in the form of an order which shall state the reasons therefor.

(3) All inquiries and proceedings before the Mamlatdar, the Tribunal, the Collector and the Government shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

CHAPTER VII

Survey, settlement and records of rights

54. Power to make rules for survey, etc. — (1) It shall be lawful for the Government to take all measures for the survey, classification and assessment of all lands, for the preparation and maintenance of land records, including the record of rights and maps and for all other matters connected therewith or incidental thereto, in accordance with such rules as may be made in this behalf.

(2) Without prejudice to the generality of the foregoing, rules may be made under this Act, for:

- (i) the appointment, powers and functions of revenue officers;
- (ii) the grant, use and relinquishment of unoccupied land;
- (iii) the survey and classification of land and the assessment and settlement of land revenue payable under any law for the time being in force;
- (iv) the settlement of boundaries and the construction and maintenance of boundary marks;
- (v) the preparation and maintenance of records of rights;
- (vi) the realisation of land revenue or other revenue demands; and
- (vii) the procedure to be followed by the revenue officers in enquiries under the rules including provisions for appeals and revision.

(3) Any such rule may be made with retrospective effect from a date not earlier than the 19th December 1961.

CHAPTER VIII

Miscellaneous

55. Lands held by Comunidades. — For the removal of doubts it is hereby declared that the provisions of this Act shall apply to lands owned by Comunidades and the provisions in the Code of Comunidades or any other Decree or other law relating to Comunidades shall stand modified or repealed to the extent necessary.

56. Exemptions. — (1) The provisions of this Act shall not apply to lands leased or held by the Government or lands granted to or for the benefit of any individual specifically for rendering any service to any religious, educational or charitable institution or for any other specific service to the public.

(2) The Government may, by notification, exempt any class of persons from the operation of all or any of the provisions of this Act.

(3) In particular, and without prejudice to the generality of sub-section (2), the Government may grant such exemption in respect of any land which is the property of a temple, church mosque or any other institution for public religious worship or of a trust for educational or charitable purpose, or hospital, pinjrapole or goshala, provided that the entire income of such land is appropriated for the purpose of such temple, church, mosque, institution, trust, hospital, pinjrapole or goshala.

(4) The Government may, by notification, reserve any area for non-agricultural purposes or industrial development and thereupon the provisions of this Act shall cease to apply in relation to any land in such area.

(5) Any exemption which is granted by Government may be withdrawn by the Government by notification.

57. Delegation of powers. — The Government may, by notification, delegate to any officer not below the rank of a Collector, all or any of the powers conferred on Government by or under this Act, subject to such conditions if any, as may be specified in the notification.

58. Bar to jurisdiction of Courts.— (1) No suit or other proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.

(2) Save as provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court.

59. Power to give directions.— The Government shall have power to issue directions or orders to Mamlatdars, Tribunal and Collectors, to give effect to the provisions of this Act and the rules made thereunder.

60. Penalty.— Whoever contravene any provision of this Act or of any rules made thereunder shall on conviction by a Magistrate be punishable with a fine not exceeding five hundred rupees.

61. Rules.— (1) The Government may, by notification, make rules generally to carry out the purposes of this Act.

(2) All rules made under this Act shall be subject to the condition of previous publication and all rules shall be laid on the table of the Legislative Assembly after they are made and shall be subject to such modifications as the Assembly may make during the Session in which they are so laid or the session immediately following.

62. Power to remove difficulties.— If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order as occasion requires, do anything (not inconsistent with this Act) which appears to it to be necessary for removing the difficulty.

Secretariat
Panjim
December 23, 1964

S. BALAKRISHNAN
Secretary to the Government
of Goa, Daman and Diu